

As an initial matter, Plaintiff fails to state a claim against the Asheville Police Department or the Buncombe County Detention Facility. In order to state a claim of county or municipal liability a Plaintiff must allege that his injury was caused by the execution of a municipal custom or policy. *Monell v. Department of Social Services*, 436 U.S. 658, 694 (1978). Plaintiff does not

identify any custom or policy that resulted in his constitutional injury. Consequently, Plaintiff fails to state a claim against the Buncombe County Detention facility or the Asheville Police Department and they are dismissed from this case.

The remaining Defendant is “John” Green, the arresting officer in Plaintiff’s criminal case. Plaintiff asserts that he suffered a head injury during his arrest. Such a conclusory statement simply does not state a claim of excessive force under the constitution. The mere fact that an individual is injured during the course of an arrest is wholly insufficient to support an excessive force claim. Likewise, Plaintiff’s allegation that he believes that a blood test was taken is insufficient. Plaintiff cannot file a cause of action premised upon a fact that he himself is not sure even occurred. Plaintiff provides no basis whatsoever for his belief. Mere speculation cannot support a claim.

Plaintiff also asserts that when he arrived at the Buncombe County Detention Facility after being treated at the trauma center he was not allowed to use a telephone or shower for 36 hours. Plaintiff also asserts that his clothes and personal items that were taken at the trauma center were never returned. First, this claim fails because Plaintiff does not connect these actions in any way to Defendant Green. Second, this claim fails because these alleged actions do not rise to the level of a constitutional violation.¹

At the very end of the text of his Complaint, Plaintiff asserts that he wants to file under the ADA. While the ADA does apply to state prisons,² Plaintiff fails to allege any facts to support an ADA claim. That is, Plaintiff does not identify what his alleged disability is. Nor does Plaintiff

¹ To the extent, Plaintiff is asserting a state law claim of assault and battery, this Court declines to exercise supplemental jurisdiction.

² Pa. Dep’t of Corr. v. Yeskay, 524 U.S. 206 (1998)

state in what manner he was discriminated against. The Complaint's lack of express allegations to support an ADA claim requires its dismissal. See Weller v. Dep't Soc. Servs., 901 F.2d 387 (4th Cir. 1990)(the requirement of liberal construction does not mean that the court can ignore a clear failure to allege facts which set forth a claim currently cognizable in a federal district court). Again, Plaintiff's broad, conclusory assertion is wholly insufficient to state a claim.

IT IS THEREFORE ORDERED THAT Plaintiff's Complaint is DISMISSED.

Signed: August 25, 2006

A handwritten signature in black ink, appearing to read "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
United States District Judge

